Calendar No. 424

106TH CONGRESS
1st Session

SENATE

REPORT
106–225

CONGRESSIONAL ACCOUNTABILITY FOR REGULATORY INFORMATION ACT OF 1999

R E P O R T

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 1198

TO AMEND CHAPTER 8 OF TITLE 5, UNITED STATES CODE, TO PROVIDE FOR A REPORT BY THE GENERAL ACCOUNTING OFFICE TO CONGRESS ON AGENCY REGULATORY ACTIONS, AND FOR OTHER PURPOSES

DECEMBER 7, 1999.—Ordered to be printed
Filed, under authority of the order of the Senate of November 19, 1999

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CONGRESSIONAL ACCOUNTABILITY FOR REGULATORY INFORMATION ACT OF 1999

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Mr. THOMPSON, from the Committee on Governmental Affairs, submitted the following

REPORT

[To accompany S. 1198]

S. 1198, the Congressional Accountability for Regulatory Information Act of 1999, is a bill introduced by Senator Richard Shelby. The Committee on Governmental Affairs, having considered S. 1198 on November 3, 1999, reports the bill favorably with a substitute amendment and an amendment to the title and recommends by voice vote with no nays that the bill do pass as amended (including an amendment to the short title to read as follows: the "Truth in Regulating Act of 1999").

I. PURPOSE AND SUMMARY

S. 1198, the "Truth in Regulating Act,"[1] is a bipartisan effort to promote effective Congressional oversight of important regulatory decisions. Under the "Truth in Regulating Act," a committee of either House of Congress may request the Comptroller General to review any proposed or final economically significant rule and to submit a report which includes an evaluation of the agency's regulatory analyses. The legislation also would increase the transparency of important regulatory decisions and increase the accountability of Congress and the agencies to the people they serve. Upon

[1] For purposes of this report, the Committee shall refer to the official short title of S. 1198 as the "Truth in Regulating Act of 1999," which was adopted by the Committee at markup in the substitute amendment to S. 1198.

introduction of the "Truth in Regulating Act," Senator Thompson stated:

> The foundation of the "Truth in Regulating Act" is the right of Congress and the people we serve to know about important regulatory decisions. Through the General Accounting Office, which serves as Congress' eyes and ears, this legislation will help us get access to the important information that federal agencies use to make regulatory decisions. * * * This will make the regulatory process more transparent, more accountable, and more democratic. [2]

In brief, S. 1198 establishes a 3-year pilot project which allows a committee of either House of Congress to request that the Comptroller General conduct an independent evaluation of the agency analyses for any proposed or final economically significant rule. The Comptroller General should submit a report detailing the results of the independent evaluation. The report should include the following elements: an evaluation of the agency's analysis of the potential benefits of the rule, including those benefits that cannot be quantified in monetary terms and the identification of the persons or entities likely to receive the benefits; an evaluation of the agency's analysis of the potential costs of the rule, including any adverse effects that cannot be quantified in monetary terms and the identification of the persons or entities likely to bear the costs; an evaluation of the agency's analysis of alternative approaches, regulatory impact analysis, federalism assessment, or other analysis or assessment prepared by the agency or required for the economically significant rule; and a summary of the results of the evaluation of the Comptroller General and the implications of those results. The independent evaluation must be a substantive evaluation of the agency's data, methodology, and assumptions used in developing the rule, including an explanation of how any strengths or weaknesses in those data, methodology, and assumptions support or detract from conclusions reached by the agency.

II. BACKGROUND AND NEED FOR LEGISLATION

The Constitution places all legislative powers with the Congress. [3] While Congress may not delegate its essential legislative functions, [4] it routinely transfers authority to implement laws and issue regulations to the President and Executive Branch agencies. Consistent with Congress' broad delegations to the Executive Branch, numerous Supreme Court decisions have inferred a broad and encompassing power in the Congress to engage in oversight to enable it to carry out its legislative function. [5]

Congress has become increasingly concerned about its obligation to oversee the administrative process. This is not without reason. By any measure, federal agencies are engaged in an enormous vol-

[2] 145 Cong. Rec. S7268 (daily ed. June 18, 1999).

[3] U.S. Const. art. I, 1 ("All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives."); see also U.S. Const. art. I, 8 (enumerating powers of Congress).

[4] *Panama Refining* v. *Ryan,* 293 U.S. 388, 430 (1935); *Schechter Poultry* v. *United States,* 295 U.S. 495, 542 (1935).

[5] See generally, Congressional Research Service, "Investigative Oversight: An Introduction to the Law, Practice and Procedure of Congressional Inquiry" 2 (Apr. 7, 1995); see also, Congressional Research Service, "Congressional Oversight Manual" 5 (Feb. 1995).

ume of regulatory activity. In a 1997 report to Congress, OMB reported that there are over 130,000 pages of federal regulations, "with about 60 federal agencies issuing regulations at a rate of about 4,000 per year. * * * Federal regulations now affect virtually all individuals, businesses, State, local and tribal governments, and other organizations in virtually every aspect of their lives or operations." [6] In recent reports, GAO noted that the November 1998 edition of the Unified Agenda of Federal Regulations contained 4,560 entries describing planned or ongoing federal regulatory actions, [7] and that federal agencies issued more than 11,000 final rules between April 1996 and December 1998. [8]

Over the years, Congress and the White House have required a variety of regulatory analyses to provide more openness, thoughtfulness, and accountability to the regulatory process. When performed well, regulatory analysis can help reduce unnecessary burdens and increase the benefits of regulation. As OMB has stated:

> [R]egulations (like other instruments of government policy) have enormous potential for both good and harm. Well-chosen and carefully crafted regulations can protect consumers from dangerous products and ensure they have information to make informed choices. Such regulations can limit pollution, increase worker safety, discourage unfair business practices, and contribute in many other ways to a safer, healthier, more productive, and more equitable society. Excessive or poorly designed regulations, by contrast, can cause confusion and delay, give rise to unreasonable compliance costs in the form of capital investments, labor and on-going paperwork, retard innovation, reduce productivity, and accidentally distort private incentives.[9]

In recent years, various statutes and executive orders have mandated that Federal agencies conduct extensive and complex regulatory analyses for important rules, especially economically significant rules. In some circumstances, agencies also conduct such analyses on their own initiative, without a specific mandate. Regulatory analyses may cover a host of concerns, including, for example, a cost-benefit analysis assessing the costs and benefits associated with a rule, a risk assessment analyzing the risks that would be reduced or avoided by a rule, and more targeted analyses of how a rule may, for example, reduce or avoid harm to sensitive populations (such as children) or inequitable impacts of environmental pollution within the population, or how the rule may affect States or local governments or small businesses. These various regulatory analyses may be important to understanding the need for a rule, whether it fulfills its goals, and what the costs and any other unin-

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[6] Office of Management and Budget, Office of Information and Regulatory Affairs, "Report to Congress on the Costs and Benefits of Federal Regulations" (Sept. 30, 1997).

[7] U.S. General Accounting Office, "Regulatory Flexibility Act: Agencies' Interpretations of Review Requirements Vary," GAO/GGD–99–55, at 19, April 2, 1999.

[8] Statement for the Record of L. Nye Stevens, Director, Federal Management and Workforce Issues, General Government Division, GAO, before the Senate Governmental Affairs Committee, "Federalism: Implementation of Executive Order 12612 in the Rulemaking Process," GAO/T–GGD–99–93, May 5, 1999.

[9] Office of Management and Budget, Office of Information and Regulatory Affairs, "Report to Congress on the Costs and Benefits of Federal Regulations" (Sept. 30, 1997), at 10.

tended consequences may be, and, depending on the circumstances, they can affect the agency's ultimate regulatory decision.

When conducting oversight of agencies' regulatory activities or when attempting to exercise regulatory review authority under the Small Business Regulatory Enforcement Fairness Act,[10] many in Congress would find it helpful to have the benefit of specialized expertise and manpower to evaluate these regulatory analyses. Many regulatory analyses are extensive, highly complex, and technical, and may be at the forefront of economic, technological, and scientific theory. Others may involve in-depth analyses of circumstances involving particular industries, specific regions or populations of the country, or specialized concerns such as those involving impacts on States and local governments.

This bill establishes a framework under which Congress can seek assistance from the General Accounting Office to evaluate regulatory analyses for economically significant regulations and to advise Congress about the implications of any strengths or weaknesses that GAO finds in the agencies' work. The results of GAO's evaluation not only will inform and assist Congress in fulfilling its oversight obligations and inform and assist the agencies and the President in executing the law, but they also will enable the public to gain greater understanding of the analytic underpinnings of agency decisions.

In short, the "Truth in Regulating Act" will provide Congress and the public with more information about important regulatory decisions, information which the public has a right to know. It will help Congress oversee whether the agency is appropriately implementing the law. It will provide an opportunity for a thorough look at important regulatory proposals by a credible reviewer of government, the General Accounting Office.

III. LEGISLATIVE HISTORY AND COMMITTEE CONSIDERATION

A. Background

Congress' engagement on legislation to strengthen its ability to conduct regulatory oversight began when Representative Sue Kelly introduced the Congressional Office of Regulatory Analysis Act ("CORA"), H.R. 1704, in the House on May 22, 1997, and Senator Richard Shelby introduced the companion bill in the Senate, S. 1675, on February 25, 1998. CORA would have established a professional office within the legislative branch to evaluate the effects of all new major regulations. Non-major rules would have been evaluated at the request of committees or individual Members of Congress. In addition to providing information on costs and benefits, analyses under CORA also would have explored possible alternative approaches to achieving the same goals as the proposed legislation at a lower cost. Finally, the office would have issued an annual report on the total cost of Federal regulations to the United States economy.

Based on discussions about S. 1675 and the Governmental Affairs Committee's consideration of the issue, Chairman Thompson and Senator Shelby took a revised approach to Congressional regulatory oversight legislation. In June 1999, Senator Shelby intro-

[10] 5 U.S.C. § 801 et seq.

duced S. 1198 as the "Congressional Accountability for Regulatory Information Act of 1999." The bill was referred to the Governmental Affairs Committee. Chairman Fred Thompson introduced S. 1244, the "Truth in Regulating Act," with a bipartisan group of cosponsors, including Senators Blanche Lincoln, George Voinovich, Bob Kerrey, and John Breaux. S. 1244 was likewise referred to the Committee. Both bills were written to achieve the same goals. Both were intended to strengthen Congress' ability to conduct oversight on economically significant regulations. Both also established procedures by which committees could request GAO to review and report on the economic, scientific, and policy analysis underlying economically significant regulations. The supporters of the legislation reported by the Committee include all those who supported the preceding bills—Senators Thompson, Shelby, Lincoln, Lott, Kerrey, Voinovich, Bond, Breaux, Stevens, Landrieu, Inhofe, Robb, Bennett, Roth, and Hagel.

Before the Committee's August markup, which included S. 1244 on its agenda, Senator Lieberman, the Ranking Democrat on the Committee, expressed several concerns about the bill. His concerns were reflected in four proposed amendments to S. 1244. In response to these concerns, Senators Thompson and Lieberman collaborated to develop a modified draft of S. 1244 to offer as an amendment in the nature of a substitute to S. 1198 at the Committee's November markup. S. 1198, with the Thompson-Lieberman amendment in the nature of a substitute, passed the Committee by voice vote, with no nays.

The changes reflected in the substitute amendment ensure the following:

(1) GAO may examine the regulation when it is published in proposed form. S. 1244, as introduced, had also provided for GAO to examine a rule during its development prior to publication.

(2) GAO will not be required to do a new regulatory analysis, but instead will do a substantive evaluation of the agency's analysis. GAO will then report to Congress on the strengths or weaknesses of the agency's analysis and what the implications of those strengths or weaknesses are for the rulemaking. S. 1198 and S. 1244, as introduced, mandated that GAO's evaluation include an analysis of alternative approaches that would be more cost-effective or provide greater net benefits. The bill no longer contains this language. The bill would not create another layer of rulemaking and would not require GAO to go outside of its traditional role as evaluator by, for example, conducting its own regulatory analysis or making its own determination of what the regulatory conclusion should be.

(3) GAO will not have its authority either expanded or limited by the bill.

(4) Requests must be made by committees with legislative or oversight jurisdiction.

These changes reflected in the substitute amendment address and resolve the concerns of Senator Lieberman while maintaining the original purposes of increasing regulatory transparency, promoting effective congressional oversight, and increasing government accountability sought by Senator Thompson in the original drafting of the "Truth in Regulating Act."

B. Committee hearings

On April 22, 1999, the Governmental Affairs Committee held a hearing on Congressional Office of Regulatory Analysis legislation. At the hearing, witnesses discussed S. 1675, the Congressional Office of Regulatory Analysis Act from the 105th Congress, which was Senator Shelby's predecessor to S. 1198. Testifying at this hearing were: Mr. Don Arbuckle, Acting Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget; The Honorable Steven Saland, State Senator, New York; Mr. Arthur J. Dyer, President, Metal Products Company, on behalf of the National Association of Manufacturers; Dr. Robert Litan, AEI-Brookings Joint Center for Regulatory Studies; Dr. Murray Weidenbaum, Chairman, Center for the Study of American Business, Washington University; Professor Sidney Shapiro, School of Policy and Environmental Affairs, Indiana University; Dr. Gary Bass, Executive Director, OMB Watch.

C. Committee action and amendments

On November 3, 1999, the Committee on Governmental Affairs marked up and reported S. 1198 by voice vote with no nays. Members present were Senators Collins, Cochran, Lieberman, Levin, Akaka, Durbin, Cleland, Edwards and Thompson. The only amendment offered was the Thompson-Lieberman substitute amendment, and it was adopted by voice vote with no nays.

At the markup, Senator Levin expressed concern over whether a Committee request for the review of a rule should be allowed to be made before the proposed rule is published. He also noted that the term "Committee" in the bill may not be sufficiently explicit, leaving open the question whether a Chairman or Ranking Member could make the request on behalf of the Committee without formal Committee approval. Chairman Thompson and Senator Lieberman agreed to work with Senator Levin on these issues before Senate consideration of the bill.

IV. ADMINISTRATION VIEWS

At the Committee's April 22 hearing, Donald R. Arbuckle, the Acting Administrator of OMB's Office of Information and Regulatory Affairs, testified on behalf of the Administration. Mr. Arbuckle stated: As is the tradition, the administration defers to Congress on matters of internal organization of the Legislative Branch. However, we believe that it is important to clarify that we believe that no Congressional office should be involved in the Executive Branch's development of new regulations prior to their formal publication."[11] This issue was addressed in the Thompson-Lieberman substitute to S. 1198 offered at markup.

[11] Testimony of Donald R. Arbuckle, Acting Administrator, Office of Information and Regulatory Affairs, OMB, before the Senate Committee on Governmental Affairs, S. Hrg. 106–180 (Apr. 22, 1999).

V. SECTION-BY-SECTION ANALYSIS

Section 1. Short title

The name of S. 1198 is the "Truth in Regulating Act of 1999."

Section 2. Purposes

Section 2 lays out three purposes of the legislation, as follows: First, to increase the transparency of important regulatory decisions; Second, to promote effective congressional oversight to ensure that agency rules are efficient, effective and fair; Third, to increase the accountability of Congress and agencies to the people they serve.

Section 3. Definitions

Section 3 defines several key terms in the bill. The term "agency" has the same meaning given such term under section 551(1) of title 5, United States Code.

The term "economically significant rule" means any proposed or final rule, including an interim or direct final rule, that may cost $100,000,000 or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

The term "independent evaluation" means a substantive evaluation of the agency's data, methodology and assumptions used in developing the economically significant rule, including an explanation of how any strengths or weaknesses in the data, methodology, and assumptions support or detract from conclusions reached by the agency, and the implications, if any, of those strengths or weaknesses for the rulemaking.

Section 4. Pilot project for report on rules

Under the 3-year pilot project established by this legislation, a committee of either House of Congress may request the Comptroller General to review an economically significant rule. The requesting committee must have either legislative or oversight jurisdiction over the rule. Because the Governmental Affairs Committee has government-wide oversight jurisdiction over agency rulemaking, it has broad request authority. The Comptroller General may review the rule when it is published in proposed or final form by the agency. The Comptroller General shall conduct an independent evaluation of the agency's regulatory analyses for the rule and submit to the requesting committee a report detailing the results of the evaluation no later than 180 calendar days after the request is received.

The Comptroller General's independent evaluation of the rule shall include the following: an evaluation of the agency's analyses of the potential benefits of the rule, potential costs of the rule, and alternative regulatory approaches; an evaluation of any regulatory impact analysis, federalism assessment, or other analysis or assessment prepared by the agency or required for the rule; and a summary of the results of the evaluation and the implications of those results for the rulemaking. The Comptroller General has discretion to develop the procedures for determining the priority of committee[12] requests for which a report shall be submitted as required by Section 4. The legislation is not intended to alter the Comptroller's current policies regarding the treatment of requests by Committee Chairs and Ranking Minority Members. For example, GAO's existing policy assigns equal status to requests from Ranking Minority Members and requests from Committee Chairs.[13] Nothing in this legislation is intended to either expand or limit the authority of the Comptroller General with regard to powers to access agency information or otherwise.

Section 5. Authorization of Appropriations

There are authorized to be appropriated to the General Accounting Office to carry out this legislation $5,200,000 for each of fiscal years 2000 through 2002.

Section 6. Effective date and duration of pilot project

This Act will take effect 90 days after enactment. Before the conclusion of the 3-year period from the effective date of this Act, the Comptroller General shall submit to Congress a report reviewing the effectiveness of the pilot project and recommending whether Congress should permanently authorize the project. The pilot project under this Act shall continue for a period of 3 years, if in each fiscal year, or portion thereof included in that period, a specific annual appropriation not less than $5,200,000 or the pro-rated equivalent thereof shall have been made for that pilot project.

VI. REGULATORY IMPACT STATEMENT

Pursuant to paragraph 11(b), rule XXVI of the Standing Rules of the Senate, the Committee, after due consideration, concludes that S. 1198 will not have a significant regulatory impact.

VII. CBO COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 17, 1999.

Hon. FRED THOMPSON,
Chairman, Committee on Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1198, the Truth in Regulating Act of 1999.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mary Maginniss.

Sincerely,

STEVEN M. LIEBERMAN
(For Dan L. Crippen, *Director*).

Enclosure.

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[12] At markup, Senator Levin raised the question about the meaning of the term "committee," and Chairman Thompson and Senator Lieberman agreed to work with him on the issue before consideration of the legislation by the Senate.

[13] General Accounting Office, "General Policies/Procedures and Communications Manual," page 1.1.2 (March 1997).

S. 1198—Truth in Regulating Act of 1999

Summary: S. 1198 would establish a three-year pilot project for the General Accounting Office (GAO) to review, at the request of the committee of jurisdiction, proposed or final agency rules that are economically significant. It would authorize the appropriation of $5.2 million in each year over the 2000–2002 period for GAO to prepare these independent evaluations. Assuming appropriation of the amounts authorized, CBO estimates that implementing S. 1198 would cost $15.6 million over the 2000–2003 period. The bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. S. 1198 contains no intergovernmental or private-sector mandates as defined in he Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: For the purposes of this estimate, CBO assumes that the amounts authorized to be appropriated for each year will be provided near the beginning of each fiscal year. Estimated spending is based on historical rates of expenditures for GAO. The estimated cost of the bill is shown in the following table. The costs of this legislation fall within budget function 800 (general government).

	By fiscal year, in millions of dollars—					
	2000	2001	2002	2003	2004	2005
Changes in spending subject to appropriation:						
Authorization Level	5	5	5	0	0	0
Estimated Outlays	2	5	6	3	0	0

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: S. 1198 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Maginniss.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

VIII. CHANGES IN EXISTING LAW

S. 1198 does not make any changes to existing law.

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